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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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LCCN 2024931823
ISBN 978-1-5310-2967-8
eISBN 978-1-5310-2968-5

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

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Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

More recently, the NextGen Bar Exam reflects a genuine effort to dramatically increase the focus on assessing more than mere knowledge, and on assessing law practice skills. "Set to debut in July 2026, the NextGen bar exam will test a broad range of foundational lawyering skills, utilizing a focused set of clearly identified fundamental legal concepts and principles needed in today's practice of law." *About the NextGen Bar Exam*, NextGen: The Bar Exam of the Future, <https://nextgenbarexam.ncbex.org>.

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors cannot implement *Educating Lawyers* and *Best Practices* or prepare students for the NextGen Bar Exam using texts designed for the traditional model of legal education. Moreover, even though our understanding of how

people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design, authored by teaching and learning experts who believe in practice-focused legal education, and written with *Educating Lawyers* and *Best Practices* (and now the NextGen Bar Exam) in mind, Context and Practice casebooks make it easy for law professors to modernize their law school classrooms.

I welcome reactions, criticisms, and suggestions; my e-mail address is mschwartz@pacific.edu. Knowing the authors of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students, if your professors care enough about your learning to have adopted this book, I bet they would welcome your input, too!

MICHAEL HUNTER SCHWARTZ

Series Designer and Editor
Consultant, Institute for Law Teaching and Learning

Preface

Welcome to the Third Edition of the Criminal Law Context and Practice book. We have made many changes that we think will improve how this book is used by law students and professors. We first obtained considerable feedback from both faculty and student users, listened to how the book worked for students as self-directed learners, and then tried to respond accordingly.

The four co-authors understand that it is not what we include in the book, but what students take away from it and recall down the road that really matters. Consequently, we have made learning science a guide to how we structured the book. To promote an effective learning process, we created a scaffolding for each chapter. The chapters commence with an outline of the contents, proceed to a summary of important points, then move to cases, problems, and further explication of rules and principles, before ending in a brief quiz.

We are cognizant of the fact that almost all students need criminal law for the bar exam and that some will need it for their livelihoods, which is why there are connections to deep knowledge and law practice in the book. We also know that it is important to provide the big picture of each area and foundational facts, so we included key points at the beginning of every chapter and an introductory problem of the type the chapter will raise. Thus, we offer both global criminal justice issues and dive deep into sequential details, such as the elements of important crimes and what they mean.

The book uses real life criminal law issues much like the podcast *Serial*, which in its Season One debut featured a true criminal case involving the murder of a high school student. It provided a riveting story, not only because it was true and involved life and death, but also because it introduces a listener to the criminal system from a much closer perspective than a criminal appellate case report. The defendant in the case, Adnan Syed, was convicted of murdering his ex-high school girlfriend, Hay Min Lee (although he was given a new hearing and released from prison largely because of *Serial*). Deciding whether the defendant is guilty, not guilty or completely innocent in the case beguiles listeners, who construct their own narratives of what happened. Realizing we might never know the truth is frustrating, but it also makes us realize how a human system of justice can have built-in failures and frailties simply because

it relies on humans for accuracy. It also points to the importance of criminal law and how the system that is created is only as good as the attorneys and judges work within it. The book uses other cases and stories to make these and other important points about the criminal system.

The book also offers close-ups of the criminal law as well. Students are introduced to an “elemental” approach to criminal law—meaning the basic components of crimes and the crimes themselves. While criminal homicide is an important crime covered in the book at length, so are sexual assault, theft, inchoate offenses, and the major affirmative defenses that can be raised by the accused, such as self-defense, defense of others, duress, necessity, insanity and entrapment. The book covers these crimes and defenses not only from the stories that are woven around them but from their granular elements and how they can apply in specific cases.

In addition, the authors are well aware that Criminal Law can be and often is taught as a statutory course, with judicial interpretation, canons of construction, and constitutional limits all relevant to analysis of statutory provisions. Thus, the book includes numerous opportunities to engage in statutory interpretation.

A goal of this book is to provide guidance to students along the criminal law “highway,” a dynamic road that is far from static. Instead of a snapshot of rules and elements, the book attempts to create longer-term and better retention of important information through the use of problems, background boxes, links, and other connections showing how things within the criminal justice system relate to each other.

The four authors teach at different law schools, come from different parts of the country, and have diverse backgrounds. This diversity brings multiple perspectives to the book. We have been prosecutors and defense counsel, have observed the system close up, and hope to provide the understandings needed by you, the students, within this larger context.

The elements of crimes are also distinguishable by their source—historically, through the common law, and today, mostly by statute. While statutes comprise the overwhelming majority of today’s American criminal laws, most derivations can be traced back to the common law of England. Yet, the Model Penal Code (MPC) is important as well, particularly in state penal codes and many criminal law classrooms, which is why we have augmented the role of the MPC in the third edition.

The authors also are aware that the criminal law is firmly embedded in the mainstream culture. There are television shows, films, and seemingly daily reports on some aspect of the criminal justice system. Consequently, this course can be as much about unlearning assumptions and knowledge gleaned from the popular culture as it is about learning rules and how to apply them from scratch. To promote connections with the outside world, we have used many high profile cases to illustrate how the law is applied currently, and have updated some of the cases from the last edition.

We hope you enjoy using this book as much as we have enjoyed writing it. If you have any comments on how we could improve it as a learning tool, please let us know. If we can help students learn better, we will be succeeding in what we have set out to do.

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May 2024

